

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES TYREE MITCHELL,

Defendant-Appellant.

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UNPUBLISHED

June 24, 2008

No. 274004

Ingham Circuit Court

LC No. 05-000318-FH

Before: Wilder, P.J., Saad, C.J., and Smolenski, J.

PER CURIAM.

Following a jury trial, defendant was convicted of larceny, MCL 750.357, assault with a dangerous weapon (felonious assault), MCL 750.82, and reckless driving, MCL 257.626. The trial court sentenced defendant to a prison term of 28 to 120 months on the larceny conviction, to be served concurrently with a term of 17 to 48 months on the assault conviction. The court also sentenced defendant to a 2-day jail term on the reckless driving conviction. Defendant appeals as of right. We affirm.

Defendant's convictions arose from an incident that began as a purse snatching, but ended as a felonious assault. According to witnesses, defendant snatched a woman's purse from a shopping cart in a grocery store parking lot. The woman chased defendant to his car, and attempted to keep him from escaping. While the woman's hand was on the hood of defendant's car, defendant turned on the car and accelerated. To avoid being hit or dragged by the car, the woman jumped onto the hood. Defendant then drove through the parking lot and onto a highway ramp, swerving wildly. Upon merging onto the highway, defendant slammed on the brakes, throwing the woman off the car. She was scraped and bruised, but was able to describe the incident to the police, who later arrested defendant. In contrast, defendant testified that he was not at the location of the incident, nor in possession of his car at the relevant time.

Defendant's first challenge on appeal is to the prosecution's failure to timely locate an alleged alibi witness, Marcel Branson. Defendant maintained throughout the trial that he had loaned his car to Marcel, who was the son of defendant's friend Phyllis Branson. Defendant's counsel gave the Bransons' alleged names and home address to the prosecutor well before trial, but the police waited several months before going to the address. When the police went to the address, they were informed that no one there knew of the Bransons. According to defendant, the failure to visit the address within a reasonable time constituted a violation of his due process rights.

Defendant did not raise this argument in the trial court, so we review the argument for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Our first task is thus to determine whether the police delay in visiting the Bransons' house amounted to a due process violation. We find no such violation. Contrary to the premise of defendant's argument, "the police have no constitutional duty to assist a defendant in developing potentially exculpatory evidence." *People v Anstey*, 476 Mich 436; 461; 719 NW2d 579 (2006).

Defendant next asserts that the prosecutor impermissibly shifted the burden of proof to defendant, during cross-examination of defendant's expert, and during closing argument. Defendant did not present these assertions to the trial court, so we again review the assertions for plain error affecting defendant's substantial rights. We first examine defendant's assertion that one of the prosecutor's questions improperly implied that defendant's expert was a "hired gun." Having reviewed the challenged question in context, we find that the question made no suggestion, improper or otherwise. The question came during cross-examination about the expert's background, and the expert interrupted the prosecutor by providing additional background information. The prosecutor accepted the response, and continued the line of questioning about the expert's background. Nothing in the question implied that the expert was a "hired gun." When the prosecutor later asked the expert about his fees, the questions were appropriate and relevant to the expert's credibility. There was no error in that line of questioning. See *People v Layher*, 464 Mich 756, 764; 631 NW2d 281 (2001) (evidence of bias of a witness is almost always relevant).

Similarly, we find no error in the challenged remarks in the prosecutor's closing argument. The prosecutor's comments were practically equivalent to the arguments our Supreme Court accepted in *People v Fields*, 450 Mich 94, 116; 538 NW2d 356 (1995). Like the defendant in *Fields*, defendant's evidentiary theory in this case involved an absent alibi witness. The prosecutor commented on the credibility of defendant's theory. Our Supreme Court determined in *Fields* that a prosecutor may comment on the credibility of an alibi theory. *Id.* at 108, 117.

Defendant's last challenge is to the rebuttal testimony given by a detective who had reviewed defendant's employment records. The prosecutor offered the testimony in response to the defendant's assertion that he had been at work on the date of the incident. The detective testified that he had spoken with a manager at defendant's place of employment, and that the manager had shown him defendant's work records. Over defense counsel's hearsay objection, the detective testified that the records indicated that defendant did not work on the day in question.

We review the trial court's ruling on defendant's objection for an abuse of discretion. *People v Moorer*, 262 Mich App 64, 67; 683 NW2d 736 (2004). We find that the work records were hearsay, and that the prosecutor offered no one to authenticate the records. See MRE 801(a); 803(6). As such, and as plaintiff concedes, the records and the related testimony were inadmissible. Given that the admission of the testimony was error, we must determine whether it is more probable than not that the error affected the outcome of the case. *People v Osantowski*, 274 Mich App 593, 607; 736 NW2d 289 (2007). To do so, we evaluate the effect of the inadmissible evidence in light of the other evidence against defendant. *People v Phillips*, 469 Mich 390, 397; 666 NW2d 657 (2003). We find that the error was not more likely than not to

have been outcome determinative. Defendant did not claim that he was working at the time of the incident; he merely claimed that he had been at work earlier in the day and had then driven to the Bransons' house. Accordingly, in light of the other strong evidence of guilt, including identification testimony and evidence linking defendant to the car involved in the incident, the inadmissible evidence concerning his work record was not more likely than not to have been outcome determinative.

Defendant also argues that McClean's testimony regarding the work records violated the Confirmation Clause. Because this issue was not preserved below, our review is for plain error affecting substantial rights. *People v Walker (On Remand)*, 273 Mich App 56, 65-66; 728 NW2d 902 (2006). In light of the strong evidence of guilt, and the limited significance of whether defendant worked at the motel on the day of the incident, we conclude that any Confirmation Clause violation in this regard did not affect defendant's substantial rights. See *Carines, supra* at 763 (noting that showing plain error affecting substantial rights generally requires showing error that affected the outcome and that the defendant bears the burden of persuasion in this regard).

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Henry William Saad  
/s/ Michael R. Smolenski